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IN THE

Supreme Court of the United States

October Term, 1964
No. 881

EUGENE ALEXANDER GRAHAM, JR.,
Defendant and Petitioner,

vs.

STATE OF CALIFORNIA, *et al.*,
Plaintiff.

PETITION FOR WRIT OF CERTIORARI.

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To the Honorable Earl Warren, Chief Justice of the United States and to the Associate Justices of the Supreme Court:

Statement of Jurisdiction.

The appellant submits herewith his statement disclosing the basis upon which the Court has jurisdiction to review the judgment of the Appellate Department of the Superior Court in which no appeal could be taken from the decision of this Court to the District Court of Appeals of the state of California. The judgment of the Appellate Department of the Superior Court affirming a judgment of the Los Angeles Municipal Court, the judgment of the Appellate Department being without opinion.

Decisions and Opinions Below.

The judgment of conviction in the Municipal Court of the County of Los Angeles, Los Angeles Judicial District, is included in the Clerk's Transcript page 22 and in the Municipal Court Clerk's transcript of docket commencing page 12; the judgment and decision of the Appellate Department page 82.

I.

Jurisdiction.

The jurisdiction of this Court is conferred by 28 U.S.C.A. Sec. 1257(2). This is a petition for review of a conviction in the Municipal Court of the County of Los Angeles, Los Angeles Judicial District, charging the defendant and appellant with a violation of Section 21658 of the Vehicle Code of the State of California, commonly called an unsafe change of lane. The conviction was after trial by jury, the first jury trial having ended in a hung jury and the second jury trial resulting in a conviction. Defendant and appellant then appealed to the Appellate Department of the Superior Court in and for the County of Los Angeles. The appellant's appeal was denied without opinion. Thereafter the defendant filed petition for re-hearing [Clk. Tr. p. 83] with application for certification to the District Court of Appeals in the event of denial of the order for re-hearing. Both the petitions for re-hearing and the petition for certification to the District Court of Appeals were denied [Clk. Tr. p. 88].

The appellant and petitioner herein contends that, as will be set forth in detail, his constitutional rights under the Fourteenth Amendment to the Constitution of the United States involving due process and equal protection

of the laws were violated in the quashing of subpoenas and the discharging of witnesses called by the defendant on his behalf; that in denying admission into evidence of documentary items, to wit, the traffic citation, defendant and appellant was further denied due process and equal protection. And finally that in sentencing the appellant and petitoner, appellant and petitioner was sentenced for alleged action in connection with issuance of subpoenas for which he had not been charged in the complaint or information and that this was a violation of due process.

II.

Cases Believed to Sustain the Jurisdiction of the Court.

The appellant petitioners have been denied due process of law in the primary sense in that they have not been given a full opportunity to present their case before the proper court.

Crane v. Hahlo, 258 U.S. 142, 145;
Chicago v. Chicago, 166 U.S. 226;
Cincinnati v. Vesper, 281 U.S. 439;
Chicago v. Minnesota, 134 U.S. 418, 456;
Sanders v. Shaw, 244 U.S. 317;
Georgia v. Decatur, 295 U.S. 171;
Brinkerhoff v. Hill, 281 U.S. 673, 682;
Shelley v. Kramer, 334 U.S. 1;
N.A.A.C.P. v. Alabama, 357 U.S. 449;
Coastal Telegraph v. Newport, 247 U.S. 464, 475;
Interstate v. Albert, 239 U.S. 560, 567;
Carlson v. Curtis, 234 U.S. 103, 106;
North Carolina v. Zachary, 232 U.S. 248, 259;
Fayer Weather v. Ritch, 195 U.S. 276, 297;

Hovey v. Elliot, 167 U.S. 409, 416, 417, 418;
Ex parte Virginia, 100 U.S. 339, 348;
Scott v. McNeil, 154 U.S. 34, 45, 46;
Great Northern Railway v. Washington, 300 U.S. 154, 167:
Dower v. Richards, 151 U.S. 658.

III.

Statement.

Defendant was cited on February 8, 1964, for an alleged violation of Subsection (a) of Section 21658 of the Vehicle Code of the State of California, commonly called an unsafe change of lane. Defendant posted $22.00 cash bail and requested trial by jury.

The case came on originally for trial in Division 21 of the Los Angeles Municipal Court on March 25, 1964, before the Honorable James P. Tante. Trial was had and the jury was unable to agree resulting in Judge Tante declaring a mistrial.

Testifying for the defendant at this trial as reflected by the Court Clerk's minutes were Orville Farley, Jay Morris, Henry Espinoza and the defendant. The Clerk's record shows other witnesses were subpoenaed, but because of stipulations arrived at in open court, witnesses did not testify.

On April 27, 1964, the second trial, the subject of this appeal commenced in Division 22 of the Los Angeles Municipal Court with the defendant a second time representing himself *in propria persona.* The defendant was only defense witness in this trial.

The Court acting on its own initiative and before any evidence was taken excused Mr. Jay Morris, a represen-

tative of the State Department of Motor Vehicles. After identification of other witnesses after commencement of trial, the Court quashed subpoenas for the remaining witness subpoenaed by the defendant.

This trial ended with jury finding the defendant guilty and Judge Allan G. Campbell sentencing the defendant to five days in the County jail.

Questions Presented.

The questions presented here are based upon violation of due process of law in the trial court. The 14th Amendment to the Constitution of the United States requires that every defendant in a criminal case be accorded due process of law. The procedural aspects of due process have long since been defined as the right to have witnesses on his behalf to appear and testify. The Court has discretion in permitting witnesses to testify when there is question of materiality, but where their testimony is essential and material, to deny the defendant the benefit of the testimony without as much as permitting the witnesses to be called is an abuse of discretion and a violation of due process.

It is well settled that the accused proceeding in a jury trial be accorded the right to present evidence on his behalf designed to show that he is not guilty of the offense charged. The right to present evidence on his behalf within the limits of admissible evidence is absolute. The denial of the right to show bias or prejudice on the part of the officer making an arrest, by the acts of the officer, mistakes or otherwise, would certainly seem to be admissible by any test. The rejection of this evidence by the trial court would therefore be an abuse

of discretion allowed in the admission of evidence and therefore a violation of due process.

The defendant in every criminal proceeding before a jury is entitled to have the benefit of an impartial trial court. To expect a defendant to try a case before a jury of persons who were hostile and prejudiced could not be considered due process in any form. Here the Court, at every opportunity, made it a point to undermine any defense the defendant was attempting to establish. In any traffic violation where the only evidence of the act constituting the violation is one officer testifying from his memory, it would seem that justice and due process would require the defendant be allowed every latitude in showing that the testimony of the officer was motivated by attitudes not involved in the observation of an alleged act which constituted a violation. Therefore the action of the Court would be an abuse of discretion in commenting on the case and the evidence, and restricting evidence improperly, thereby denying defendant due process.

The Court here, in sentencing the defendant, proposed to punish the defendant not only for the alleged traffic violation, but also for an abuse of process in subpoenaing witnesses that the court did not permit to testify. The Court in imposing the sentence based upon a matter not involved in the complaint, and a matter upon which the defendant had not been formally arraigned and not had an opportunity to defend was an abuse of discretion and a violation of due process.

Had the Court decided that the acts of the defendant in subpoenaing the witnesses was improper and wanted to hold him in contempt of court, this would have been

subject to a trial. Under every rule of procedural due process the punishment for this so called abuse of process was unconstitutional.

There is no place in the record or any portion of the record which in any way mentions the defendant's driving record as warranting the kind of punitive action taken. The sole reference at this time was to the alleged abuse of process and the Judge was kind enough to make the fact abundantly clear, when he stated, for the record, R. T. Vol. II, p. 10,

> "The court has avowedly taken these matters into consideration, they may be fully before the Appellate Department of the Superior Court for consideration there."

Conclusion.

It is respectfully submitted that important constitutional questions have been raised in this case deserving of the consideration of the court and upon opportunity of the court to consider full brief and full argument, the protection of the constitutional rights of the petitioner.

Respectfully submitted,

THOMAS G. NEUSOM,
Attorney for Petitioner.